

IN THE CIRCUIT COURT OF CALLAWAY, MISSOURI
JUDICIAL CIRCUIT 13
DIVISION _____

STATE OF MISSOURI ex rel. JEREMIAH)
W. (JAY) NIXON, Missouri Attorney General;)
and THE MISSOURI DEPARTMENT OF)
NATURAL RESOURCES,)

Plaintiff,)

v.)

Case No. _____

RICHARD SCHNEIDER, an individual;)
SABRINA LLAMAS-SOTO, an individual,)

Please serve Richard Schneider at:)

2490 Count Road 157)
Auxvasse, Missouri 65231)

Or at:)

109 Oakborough Drive)
O'Fallon, Missouri 63366)

Please serve Sabrina Llamas-Soto at:)

1418 Coco Place)
Wentzville, Missouri 63385)

Or at:)

109 Oakborough)
O'Fallon, Missouri 63366)

Defendants.)

VERIFIED PETITION FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

I. STATEMENT OF THE CASE

1. The State of Missouri ex rel. Jeremiah W. (Jay) Nixon, and the Missouri Department of Natural Resources filed this lawsuit under the Missouri Solid Waste Management law in an effort to stop Richard Schneider and Sabrina Llamas-Soto from transporting, storing, and/or accepting scrap tires on property owned by Sabrina Llamas-Soto in Callaway County, Missouri. There are approximately 10,000 scrap tires already on the property owned by Sabrina Llamas-Soto. The scrap tires are illegally stored and create an acute public health and safety nuisance to the citizens of the State of Missouri;

2. With this lawsuit, Missouri requests Sabrina Llamas-Soto and Mr. Schneider be enjoined from bringing more scrap tires to the property and an injunction requiring Sabrina Llamas-Soto and Mr. Schneider to properly dispose of the scrap tires currently on the Site. Missouri also seeks an award of civil penalties for violating the Missouri Solid Waste Management Law.

II. JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to § 478.070, RSMo and § 260.240.1, RSMo;

4. Venue is proper in this Court and the Attorney General has the right to bring this civil action for relief pursuant to § 260.240.1, RSMo because the violations of law alleged herein occur in Callaway County;

III. PARTIES

5. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General for the State of Missouri who is qualified by § 260.240.1, RSMo; to bring this action on behalf of the State of Missouri and the Missouri Department of Natural Resources;

6. The Missouri Department of Natural Resources (“MDNR”) is a duly authorized state agency created and granted certain powers under § 640.010, RSMo. The powers and duties of the MDNR generally relate to environmental protection and the conservation and management of natural resources. A portion of MDNR’s duties include administering and enforcing the Missouri Solid Waste Management Law and the implementing regulations;

7. Richard Schneider is an individual who resides at 2490 Count Road 157 Auxvasse, Missouri 65231 and is known to reside at 109 Oakborough Drive, O’Fallon, Missouri 63366. Mr. Schneider illegally transported scrap tires to the property located at NE 1/4 of Section 4, Township 48 North, Range 8 West in Callaway County, Missouri. Richard Schneider is the step-father of Sabrina Llamas-Soto;

8. Sabrina Llamas-Soto is an individual who resides at 1418 Coco Place, Wentzville, Missouri 63385 and is known to reside at 109 Oakborough Drive, O’Fallon, Missouri 63366. Sabrina Llamas-Soto is the step-daughter of Richard Schneider. Sabrina Llamas-Soto is the owner of record of property located at NE 1/4 of Section 4, Township 48 North, Range 8 West in Callaway County, Missouri. Sabrina Llamas-Soto allowed thousands of scrap tires to be placed upon the property by Richard Schneider;

IV. ALLEGATIONS OF FACT

9. Missouri incorporates by reference paragraphs 1 through 8 as is set forth fully herein;

10. Sabrina Llamas-Soto is the owner of record for property located at NE 1/4 of Section 4, Township 48 North, Range 8 West in Callaway County, Missouri (hereinafter referred to as the "Site");

11. Sabrina Llamas-Soto is the step-daughter of Mr. Richard Schneider;

12. Mr. Schneider owned the Site prior to Sabrina Llamas-Soto. Mr. Schneider quit-claimed the Site to Sabrina Llamas-Soto on September 8, 2002;

13. Approximately 10,000 scrap tires are present upon the Site;

14. Sabrina Llamas-Soto and/or Mr. Schneider, transported or caused the transportation of scrap tires to the Site;

15. Sabrina Llamas-Soto and/or Mr. Schneider, dumped or deposited, or caused the dumping or depositing of scrap tires onto the surface of the ground at the Site;

16. Sabrina Llamas Soto does not have a permit issued by the Department of Natural Resources which would authorize: 1.) maintaining a scrap tire site; 2.) operating a scrap tire processing facility; 3.) operating or maintaining a solid waste disposal area; or 4.) transport of scrap tires;

17. Mr. Schneider does not have a permit issued by the Department of Natural Resources which would authorize: 1.) maintaining a scrap tire site; operating a scrap tire processing facility; 3.) operating or maintaining a solid waste disposal area; or 4.) transport of scrap tires;

18. The scrap tires at the Site are not stored according to the National Fire Protection Association standards found at, “*Standard for Storage of Rubber Tires*, NFPA 231D, 1994 edition;

19. The scrap tires at the Site are exposed to water. The scrap tires at the Site are not drained of water nor are the tires inside a building, trailer or under an impermeable cover. The scrap tires at the Site are not rotated to keep water from collecting inside the tire. Furthermore, the scrap tires at the Site are not treated with larvicide and/or adulticide to prevent mosquitos from breeding in the water inside the scrap tires. Scrap tires provide a haven for mosquitos to breed which presents a serious public health and safety issue for surrounding citizens and domestic animals;

20. Dead brush and weeds have grown up among the scrap tires. Dead tree limbs have fallen upon the piles of scrap tires. The dead brush, weeds and tree limbs present an extreme fire hazard that could set the tires ablaze creating a serious public health and safety issue for the community;

21. Also, several large plastic drums and compressed gas containers are present on the property which contain an unknown substance or chemical the identity of which must be tested by Missouri to determine whether the contents are hazardous to the public health;

22. Sabrina Llamas-Soto or Mr. Schneider have not provided the Department of Natural Resources with any financial assurance instruments to ensure the Site will be cleaned up;

STATEMENT OF THE LAW

23. A tire is defined by statute to include, “a continuous solid or pneumatic rubber covering encircling the wheel of any self-propelled vehicle” § 260.200.1(47), RSMo;

24. A scrap tire is a tire that is, “no longer suitable for its original intended purpose because of wear, damage, or defect.” § 260.200.1(34), RSMo;

25. A scrap tire site is an area where, “five hundred or more scrap tires are accumulated, but not including a site owned or operated by a scrap tire end-user that burns scrap tires for generation of energy or converts scrap tires to a useful product.” § 260.200.1(39), RSMo;

26. A scrap tire is also considered solid waste, which is defined as, “garbage, refuse and other discarded materials including, but not limited to, solid and semisolid waste materials from industrial, commercial, agricultural, governmental and domestic activities . . . ;” § 260.200.1(40), RSMo;

27. A solid waste disposal area is defined as, “any area used for the disposal of solid waste from more than one residential premises, or one or more commercial, industrial, manufacturing, recreational, or governmental operations;” § 260.200.1(41), RSMo;

28. A solid waste management system is, “the entire process of managing solid waste in a manner which minimizes the generation and subsequent disposal of solid waste, including waste reduction, source separation, collection, storage, transportation, recycling, resource recovery, volume minimization, processing, market development, and disposal of solid wastes.” § 260.200.1(44), RSMo;

29. “It is unlawful for any person to operate a solid waste processing facility or solid waste disposal area of a solid waste management system without first obtaining an operating permit from the department.” § 260.205.1, RSMo;

30. “It is unlawful for any person to: (1) Dump or deposit, or permit dumping or depositing of any solid wastes onto the surface of the ground or into streams, springs, and all bodies of surface or ground water, whether natural or artificial, within the boundaries of the state except in a solid waste processing facility or solid waste disposal area having a permit as required by section 260.205 . . . ;” § 260.210.1(1), RSMo;

31. It is also unlawful to construct or alter a solid waste disposal area of a solid waste management system without approval from the Missouri Department of Natural Resources. § 260.210.1(2), RSMo;

32. Violations of the Missouri Solid Waste Management Law are subject to an injunction to prevent such violations and a civil penalty, “not to exceed \$1,000 per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper.” § 260.240.1, RSMo;

33. Pursuant to section 260.270.1(1), RSMo:

It shall be unlawful to haul for commercial profit, collect, process, or dispose of scrap tires in the state except as provided in this section. This section shall not be construed to prohibit scrap tires from being hauled to a lawfully operated facility in another state. Scrap tires shall be collected at a scrap tire site, scrap tire processing facility, scrap tire end-user facility, or a scrap tire collection center.”

34. It is unlawful for any person to, “transport scrap tires for consideration within the state without a permit.” § 260.270.1(5), RSMo;

35. “A person shall not maintain a scrap tire site unless the site is permitted by the department of natural resources for the property and temporary storage of scrap tires or the site is an integral part of the person’s permitted scrap tire processing facility or registered scrap tire end-user facility.” § 260.270.1(2), RSMo;

36. Section 260.270.1(3) prohibits operating a scrap tire processing facility unless the facility is permitted by the department. Section 260.270.1(3) also prohibits the maintaining a scrap tire end-user facility unless the facility is registered by the department;

37. An operator of a scrap tire site, “shall ensure that the area is properly closed upon cessation of operations.” § 260.275.1, RSMo. An operator shall provide a, “financial assurance instrument in such an amount and form as prescribed by the department to ensure that, upon abandonment, cessation or interruption of the operation of the site, an approved closure plan is completed;” § 260.275.3, RSMo;

38. The Department of Natural Resources promulgated rules pertaining to fire protection and pest control pursuant to the authority of section 270.270.3, RSMo, which are found at 10 C.S.R. §§ 80-8.40(5)(A) and (5)(E);

39. Scrap tires must be stored according to the “*Standard for Storage of Rubber Tires*, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association (NFPA) . . .” 10 C.S.R. § 80-8.40(5)(A)(1) & (2);

40. An owner or operator of a scrap tire site must either drain tires of water and keep the tires dry inside a building, trailer or under a water impermeable cover; rotate tires so the tires do not retain water; or treat the tires with a larvicide and/or adulticide to prevent the development of mosquito larvae and pupae as often as is necessary to prevent mosquito development. 10 C.S.R. §§ 80-8.40(5)(E)(1)-(3);

41. If Sabrina Llamas-Soto or Mr. Schneider fail to properly dispose of the scrap tires on the Site, and if Missouri cleans up the Site using state funds, Missouri is entitled to recover its costs associated with any cleanup pursuant to section 260.276.3, RSMo;

VI. CLAIMS FOR RELIEF

COUNT I:

VIOLATIONS OF THE MISSOURI SOLID WASTE MANAGEMENT LAW BY SABRINA LLAMAS-SOTO

42. Missouri incorporates by reference paragraphs 1 through 41 as is set forth fully herein;
43. Sabrina Llamas-Soto is the owner of record of the Site;
44. Sabrina Llamas-Soto transported scrap tires to the Site without a permit in violation of sections 260.270.1(1) and 260.270.1(5), RSMo;
45. Sabrina Llamas-Soto dumped or deposited, or caused the dumping or depositing of solid waste on the Site without a permit from the Missouri Department of Natural Resources in violation of section 260.210.1(1), RSMo;
46. Sabrina Llamas-Soto maintains, causes the maintenance, or allows the maintenance of a solid waste disposal area on the Site without a permit issued by the Missouri Department of Natural Resources in violation of section 260.210.1(1), RSMo;
47. Sabrina Llamas-Soto maintains, causes the maintenance, or allows the maintenance of a scrap tire site without a permit issued by the Missouri Department of Natural Resources in violation of section 260.270.1(2), RSMo;
48. The scrap tires at the Site are not stored according to the “*Standard for Storage of Rubber Tires*, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association (NFPA) . . . ,” in violation of 10 C.S.R. § 80-8.40(5)(A)(1) & (2);

49. The scrap tires at the Site are uncovered and not kept dry. The scrap tires at the Site are not treated with larvicide or adulticide to prevent mosquitos from breeding inside the water collected in the scrap tires in violation of 10 C.S.R. §§ 80-8.40(5)(E)(1)-(3);

50. Sabrina Llamas Soto's creation and maintenance of the Site is of such a continuous nature and in such conscious disregard for the public health, soil and water resources of the State of Missouri that Missouri believes Sabrina Llamas Soto will continue to violate the Missouri Solid Waste Management Law and regulations in the future unless she is enjoined by this Court;

51. There is no substitute for compliance with the Missouri Solid Waste Management Law and therefore, Missouri has no adequate remedy at law to ensure compliance with the Missouri Solid Waste Management Law;

52. Violations of the Missouri Solid Waste Management Law are subject to an injunction to prevent such violations and a civil penalty, "not to exceed \$1,000 per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper." § 260.240.1, RSMo;

53. If Sabrina Llamas-Soto fails to properly dispose of the scrap tires on the Site, and if Missouri cleans up the Site using state funds, Missouri is entitled to recover its costs associated with any cleanup pursuant to section 260.276.3, RSMo;

WHEREFORE, Missouri prays the Court will grant the following relief against Sabrina Llamas-Soto:

- I. Issue a temporary, preliminary and permanent injunction compelling Sabrina Llamas-Soto to:

- a. stop transporting, dumping and/or depositing scrap tires and/or causing the transportation, dumping and/or depositing of scrap tires to and on the Site;
- b. comply with the scrap tire storage requirements of 10 C.S.R. § 80-8.40(5) until all scrap tires have been removed from the Site;
- c. grant Missouri the right to access the Site at all reasonable times to ensure compliance with the Court's Orders;
- d. remove all scrap tires on the Site to a facility permitted by law to receive such scrap tires;

II. Grant Missouri a Judgment against Sabrina Llamas-Soto for:

- a. civil penalties as established by statute of up to \$1,000 per day for each day Sabrina Llamas-Soto violated the provisions of the Missouri Solid Waste Management Law;
- b. all costs the State of Missouri incurs in regard to cleaning up the Site;
- c. all costs associated with bringing this legal action;
- d. any other relief as the Court deems just and proper.

COUNT II:

**VIOLATIONS OF THE MISSOURI SOLID WASTE MANAGEMENT LAW BY
MR. RICHARD SCHNEIDER**

- 54. Missouri incorporates by reference paragraphs 1 through 41 as is set forth fully herein;
- 55. Mr. Schneider owned the Site until he quit-claimed his interest to his step-daughter, Sabrina Llamas-Soto on September 9, 2002;
- 56. Mr. Schneider transported scrap tires to the Site without a permit in violation of

sections 260.270.1(1) and 260.270.1(5), RSMo;

57. Mr. Schneider dumped or deposited, or caused the dumping or depositing of solid waste on the Site without a permit from the Missouri Department of Natural Resources in violation of section 260.210.1(1), RSMo;

58. Mr. Schneider maintains, causes the maintenance, or allows the maintenance of a solid waste disposal area on the Site without a permit issued by the Missouri Department of Natural Resources in violation of section 260.210.1(1), RSMo;

59. Mr. Schneider maintains, causes the maintenance, or allows the maintenance of a scrap tire site without a permit issued by the Missouri Department of Natural Resources in violation of section 260.270.1(2), RSMo;

60. The scrap tires at the Site are not stored according to the “*Standard for Storage of Rubber Tires*, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association (NFPA) . . . ,” in violation of 10 C.S.R. § 80-8.40(5)(A)(1) & (2);

61. The scrap tires at the Site are uncovered and not kept dry. The scrap tires at the Site are not treated with larvicide or adulticide to prevent mosquitos from breeding inside the water collected in the scrap tires in violation of 10 C.S.R. §§ 80-8.40(5)(E)(1)-(3);

62. Mr. Schneider’s creation and maintenance of the Site is of such a continuous nature and in such conscious disregard for the public health, soil and water resources of the State of Missouri that Missouri believes Mr. Schneider will continue to violate the Missouri Solid Waste Management Law and regulations in the future unless she is enjoined by this Court;

63. There is no substitute for compliance with the Missouri Solid Waste Management Law and therefore, Missouri has no adequate remedy at law to ensure compliance with the Missouri Solid Waste Management Law;

64. Violations of the Missouri Solid Waste Management Law are subject to an injunction to prevent such violations and a civil penalty, “not to exceed \$1,000 per day for each day, or part thereof, the violation occurred and continues to occur, or both, as the court deems proper.” § 260.240.1, RSMo;

65. If Mr. Schneider fails to properly dispose of the scrap tires on the Site, and if Missouri cleans up the Site using state funds, Missouri is entitled to recover its costs associated with any cleanup pursuant to section 260.276.3, RSMo;

WHEREFORE, Missouri prays the Court will grant the following relief against Mr. Richard Schneider:

- I. Issue a temporary, preliminary and permanent injunction compelling Mr. Schneider to:
 - a. stop transporting, dumping and/or depositing scrap tires and/or causing the transportation, dumping and/or depositing of scrap tires to and on the Site;
 - b. comply with the scrap tire storage requirements of 10 C.S.R. § 80-8.40(5) until all scrap tires have been removed from the Site;
 - c. grant Missouri the right to access the Site at all reasonable times to ensure compliance with the Court’s Orders;
 - d. remove all scrap tires on the Site to a facility permitted by law to receive such scrap tires;

- II. Grant Missouri a Judgment against Mr. Schneider for:
- a. civil penalties as established by statute of up to \$1,000 per day for each day Mr. Schneider violated the provisions of the Missouri Solid Waste Management Law;
 - b. all costs the State of Missouri incurs in regard to cleaning up the Site;
 - c. all costs associated with bringing this legal action;
 - d. any other relief as the Court deems just and proper.

VERIFICATION

I, Kirk Mitchell, being first duly sworn upon my oath, do hereby state that the above and foregoing allegations of fact are true and correct to the best of my knowledge and belief.


Kirk Mitchell

Subscribed and sworn to before me, a Notary Public, this 13th day of September, 2005.
Witness my hand and seal.

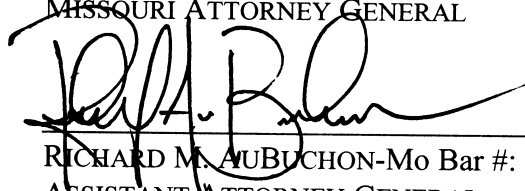

Notary Public

My Commission Expires: _____

MARY K. ABNER
Notary Public - State of Missouri
County of Callaway
My Commission Expires Nov. 19, 2008
Commission #04475490

RESPECTFULLY SUBMITTED,

JEREMIAH W. (JAY) NIXON
MISSOURI ATTORNEY GENERAL


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